

## § 1202.9

## 12 CFR Ch. XII (1–12 Edition)

has 10 days, or such other time period that FHFA or FHFA-OIG may allow, to respond.

(i) *Notice of FOIA lawsuit.* FHFA or FHFA-OIG will promptly notify the submitter whenever a requester files suit seeking to compel disclosure of the submitter's confidential commercial information. FHFA or FHFA-OIG will promptly notify the requester whenever a submitter files suit seeking to prevent disclosure of information.

### § 1202.9 How do I appeal a response denying my FOIA request?

(a) *Right of appeal.* If FHFA or FHFA-OIG denied your request in whole or in part, you may appeal the denial by writing directly to the FOIA Appeals Officer through electronic mail, mail, delivery service, or facsimile. The electronic mail address is: [foia@fhfa.gov](mailto:foia@fhfa.gov). For mail or delivery service, the mailing address is: FOIA Appeals Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. The facsimile number is: (202) 414-8917. You can help FHFA and FHFA-OIG process your appeal by marking electronic mail, letters, or facsimiles and the subject line, envelope, or facsimile cover sheet with "FOIA Appeal." For appeals of denials, whether in whole or in part, made by FHFA-OIG, the appeal must be clearly marked by adding "FHFA-OIG" after "FOIA Appeal." All appeals from denials, in whole or in part, made by FHFA-OIG will be forwarded to the FHFA-OIG FOIA Appeals Officer for processing and direct response. FHFA's "Freedom of Information Act Reference Guide," which is available on FHFA's Web site, <http://www.fhfa.gov>, provides additional information to assist you in making your appeal.

(b) *Timing, form, content, and receipt of an appeal.* Your appeal must be written and submitted within 30 calendar days of the date of the decision by FHFA or FHFA-OIG denying, in whole or in part, your request. Your appeal must include a copy of the initial request, a copy of the letter denying the request in whole or in part, and a statement of the circumstances, reasons, or arguments you believe support disclosure of the requested record(s). FHFA and FHFA-OIG will not consider an im-

properly addressed appeal to have been received for the purposes of the 20-day time period of paragraph (d) of this section until it is actually received by FHFA.

(c) *Extensions of time to appeal.* If you need more time to file your appeal, you may request, in writing, an extension of time of no more than 10 calendar days in which to file your appeal, but only if your request is made within the original 30-calendar day time period for filing the appeal. Granting such an extension is in the sole discretion of the FHFA or FHFA-OIG FOIA Appeals Officer.

(d) *Final action on appeal.* FHFA's or FHFA-OIG's determination on your appeal will be in writing, signed by the FHFA or FHFA-OIG FOIA Appeals Officer, and sent to you within 20 days after the appeal is received, or by the last day of the last extension under paragraph (e) of this section. The determination of an appeal is the final action of FHFA or FHFA-OIG on a FOIA request. A determination may—

(1) Affirm, in whole or in part, the initial denial of the request and may include a brief statement of the reason or reasons for the decision, including each FOIA exemption relied upon;

(2) Reverse, in whole or in part, the denial of a request in whole or in part, and require the request to be processed promptly in accordance with the decision; or

(3) Remand a request to FHFA or FHFA-OIG, as appropriate, for re-processing, stating the time limits for responding to the remanded request.

(e) *Notice of delayed determinations on appeal.* If FHFA or FHFA-OIG cannot send a determination on your appeal within the 20-day time limit, the designated Appeals Officer will continue to process the appeal and upon expiration of the time limit, will inform you of the reason(s) for the delay and the date on which a determination may be expected. In this notice of delay, the FHFA or FHFA-OIG FOIA Appeals Officer may request that you forebear seeking judicial review until a final determination is made.

(f) *Judicial review.* If the denial of your request for records is upheld in whole or in part, or if a determination on your appeal has not been sent at the

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end of the 20-day period in paragraph (d) of this section, or the last extension thereof, you may seek judicial review under 5 U.S.C. 552(a)(4).

### **§ 1202.10 Will FHFA or FHFA-OIG expedite my request or appeal?**

(a) *Request for expedited processing.* You may request, in writing, expedited processing of an initial request or of an appeal. FHFA or FHFA-OIG may grant expedited processing, and give your request or appeal priority if your request for expedited processing demonstrates a compelling need by establishing one or more of the following—

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged Federal Government activity if you are a person primarily engaged in disseminating information;

(3) The loss of substantial due process or rights;

(4) A matter of widespread and exceptional media interest in which there exists possible questions about the Federal Government's integrity, affecting public confidence; or

(5) Humanitarian need.

(b) *Certification of compelling need.* Your request for expedited processing must include a statement certifying that the reason(s) you present demonstrate a compelling need are true and correct to the best of your knowledge.

(c) *Determination on request.* FHFA or FHFA-OIG will notify you within 10 days of receipt of your request whether expedited processing has been granted. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal under § 1202.9 of that decision will be acted on expeditiously.

### **§ 1202.11 What will it cost to get the records I requested?**

(a) *Assessment of fees, generally.* FHFA or FHFA-OIG will assess you for fees covering the direct costs of responding to your request and costs for dupli-

cating records, except as otherwise provided in a statute with respect to the determination of fees that may be assessed for disclosure, search time, or review of particular records.

(b) *Assessment of fees, categories of requesters.* The fees that FHFA or FHFA-OIG may assess vary depending on the type of request or the type of requester you are—

(1) *Commercial use.* If you request records for a commercial use, the fees that FHFA or FHFA-OIG may assess are limited to FHFA's or FHFA-OIG's operating costs incurred for document search, review, and duplication.

(2) *Educational institution, noncommercial scientific institution, or representative of the news media.* If you are not requesting records for commercial use and you are an educational institution or a noncommercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, the fees that may be assessed are limited to standard reasonable charges for duplication in excess of 100 pages or an electronic equivalent of 100 pages.

(3) *Other.* If neither paragraph (b)(1) nor paragraph (b)(2) of this section applies, the fees assessed are limited to the costs for document searching in excess of two hours and duplication in excess of 100 pages, or an electronic equivalent of 100 pages.

(c) *Fee schedule.* The current schedule of fees is maintained on FHFA's Web site at: <http://www.fhfa.gov>.

(d) *Notice of anticipated fees in excess of \$100.00.* When FHFA or FHFA-OIG determines or estimates that the fees chargeable to you will exceed \$100.00, you will be notified of the actual or estimated amount of fees you will incur, unless you earlier indicated your willingness to pay fees as high as those anticipated. When you are notified that the actual or estimated fees exceed \$100.00, your FOIA request will not be considered received by FHFA or FHFA-OIG until you agree to pay the anticipated total fee.

(e) *Advance payment of fees.* FHFA or FHFA-OIG may request that you pay estimated fees or a deposit in advance of responding to your request. If FHFA or FHFA-OIG requests advance payment or a deposit, your request will